IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9862 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT FISHERIES CENTRAL COOPERATIVE ASSOCIATION LTD

Versus

MOHMAD IQBAL KARAMTALI SAIYED

Appearance:

MR SIRAJ R GORI for Petitioner

MR KV GADHIA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/03/2001

ORAL JUDGEMENT

#. The petitioner has challenged the award dated 26-6-2000 passed by the Labour Court, Ahmedabad setting aside the order of dismissal of the respondent and directing his reinstatement with 50 per cent back wages. No counter affidavit has been filed. Shri KV Gadhia states that he will argue the matter without filing counter affidavit. As such, the learned counsel for the petitioner and the respondent have been heard.

#. The contention of the learned counsel for the petitioner is that, the order of the Tribunal is illegal and contrary to law, hence, it is required to be quashed and set aside. As against this, the contention of Shri Gadhia has been that, the respondent was appointed as Trainee (Farm Supervisor) on a consolidated pay of Rs.2,000=00 per month for a period of one year, and thereafter, he was placed on probation and the period of probation of one year was extended for further period, hence, his services were wrongly terminated.

#. This Court will not sit as a Court of Appeal over the award of the Tribunal. However, as a court of supervisory jurisdiction, it has to be seen in this petition, whether the order of the Tribunal is in accordance with law and also in accordance with the terms and conditions of appointment of the respondent and rules governing the appointment of the respondent.

#. Shri Gadhia, learned counsel for the respondent has urged on the basis of xerox copy of advertisement in a newspaper that the petitioner was invited to apply for the post in supervisory/managerial cadres, and in face of this advertisement, the selected candidates shall be placed on training for one year at a fixed salary of Rs.2,000=00/Rs.3,000=00 per month, and on successful completion of the training, the incumbents shall be absorbed in the regular pay scales of Rs.1,400=00 Rs.3,500=00 on probation of one year. Accordingly, he contended that the respondent was appointed on regular basis and his services could not be terminated without following due procedure. It may, however, be mentioned that, this advertisement did not prescribe all the terms and conditions on which the candidates were to be selected and appointed. Only indication in this advertisement was that, the successful candidates shall be placed on training for one year on a fixed salary, and after successful completion of the training, the incumbents shall be absorbed in regular scale. This, however, does not mean that the successful candidates shall be absorbed on regular cadre on regular basis.

#. Annexure-'B' is the office order dated 27-5-1993, which provides that the respondent was appointed as Trainee (Farm Supervisor) on a consolidated pay of Rs.2,000=00 per month. Interalia, one of the terms of appointment was that, his appointment was purely temporary and liable to be terminated at any time with 30 days notice or notice pay in lieu thereof without

assigning any reason thereof. There is, thus, clear indication from this order that the respondent was appointed on purely temporary basis and his services could be terminated at any time with 30 days notice or notice pay in lieu thereof and no reason for termination was to be given by the employer. Subsequent order dated 30-11-1994 provides that the respondent was placed on probation for a period of one year and this probation period could be extended. Thus, after completing one year's training, the respondent was placed on probation for a period of one year. Rule-11 of the Staff Regulation, 1962 (as amended from time to time), provides for probation in Sec.II. Rule-11(iv) provides that, during the period of probation or at the end of the period of probation, an employee is liable to be removed from service without any inquiry or assigning any reason with 24 hours notice thereof. Consequently, this rule also does not contemplate any inquiry in case of a probationer.

#. Shri Gadhia, learned counsel for the respondent, however, supported the judgment of the Tribunal on the contention that the order of termination is violative of Regulation-16 of the Staff Regulation, 1962. According to him, if the service of the respondent was to be terminated, he was entitled to one month's notice or one month's salary in lieu of notice. However, careful consideration of Regulation-16 regarding termination indicates that the contention of Shri Gadhia can not be accepted. It can not be said that Regulation-16(i) was violated. It deals with cases where an employee wishes to discontinue his service and not the case where employer wishes to discontinue service of his employee.

#. Rule-16(i) provides that, an employee other than an employee on probation or an employee appointed on a temporary basis, shall not leave or discontinue his service in the Association without his first giving notice in writing to the competent Authority of his intention to discontinue service. The period of notice shall be three months for Class-I employee and one month in case of other employees, provided that such notice shall be waived in part or in full by the competent Authority at its discretion. Consequently, it is not a case covered by Rule-16(i) of the Regulation, and consequently, the Tribunal was in error that this rule was violated by the Authority, terminating the service of the respondent. In my opinion, Rule-16(ii) of Sec.III is attracted. Sec.III deals with termination and Regulation-16(ii) provides that the Chairman of the Association may terminate the service of an employee at

any time after the expiry of the period of probation on giving him three months' notice or salary in lieu thereof, if he is a Class-I employee, or one month's notice or salary in lieu thereof, if he is an employee of any other class.

#. Thus, the services of an employee on probation could be terminated under Rule-16(ii) of the Regulation. As such, no inquiry was required to be conducted for terminating the services of an employee, namely, the respondent, who was to be on probation for extended period of one year.

#. The impugned order of the Tribunal is, therefore, apparently illegal and contrary to the Regulation-16(ii) and Regulation-11(iv) of the Staff Regulation, 1962. The order of the Tribunal, therefore, can not be sustained. In the result, the petition succeeds and is hereby allowed. The impugned order of the Tribunal contained in Annexure-'A' dated 26-6-2000 is hereby quashed and set-aside. No order as to costs.

March 22, 2001. [D.C. Srivastava, J.]
/sakkaf